

ORIGINAL

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CLERK OF THE SUPREME COURT
STATE OF MONTANA

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STATE OF MONTANA

Attorneys for Defendants Grandview Estates, Inc., George E. Cook,
Alice M. Cook, and Saddle Ridge Estates, a Montana Limited Partnership

IN THE SUPREME COURT OF THE STATE OF MONTANA

S.M. LALANI and CAROL LALANI,)

Plaintiffs and Appellants,)

vs.)

GRANDVIEW ESTATES, INC., GEORGE)
E. COOK, ALICE M. COOK, *et al*,)

Defendants and Appellees,)

and)

SADDLE RIDGE HOMEOWNERS)
ASSOCIATION, INC.,)

Cross-Claim Defendants.)

and)

MICHAEL S. and CYNTHIA)
HUENPFNER, *et al*, (North Ridge Lot)
Owners), ARTHUR M. BARBICHE,)
et al, (John May Lane Lot Owners),)

Third Party Plaintiffs,)

vs.)

Supreme Court No. DA-10-0286

**DEVELOPER DEFENDANTS'
MOTION TO DISMISS
PLAINTIFFS' APPEAL ON
BASIS THAT JUDGMENTS
AND ORDERS APPEALED
FROM ARE NOT FINAL**

MARY S. MCGEE, *et al*, and ALL OTHER)
PERSONS or ENTITIES, UNKNOWN,)
CLAIMING or WHO MIGHT CLAIM ANY)
RIGHT, TITLE, ESTATE or INTEREST IN,)
or ENCUMBRANCE UPON, THE)
EASEMENT DESCRIBED IN THE)
COMPLAINT AS TO TROOPER TRAIL,)
or WHO CLAIM AN INTEREST)
ADVERSE TO THIRD PARTY)
PLAINTIFFS' EASEMENT or ANY)
CLOUD UPON THIRD PARTY)
PLAINTIFFS' EASEMENT, WHETHER)
SUCH CLAIM or POSSIBLE CLAIM)
BE PRESENT or CONTINGENT, and)
ALL OTHER PERSONS or ENTITIES,)
KNOWN OR UNKNOWN,)

Third Party Defendants.)

MARY S. McGEE, *et al*,)

Third Party Cross-Claim Plaintiffs,)

vs.)

LUZ E. RODRIGUEZ and SALIM and)
CAROL LALANI,)

Third Party Cross-Claim Defendants.)

COMES NOW, Defendants Saddle Ridge Estates, a Montana Limited
Partnership, George E. Cook and Alice M. Cook, and Grandview Estates, Inc.,
(herein "Developers") by and through their attorney James A. McLean of the law

firm of Drysdale, McLean & Willett, PLLP, and move this Court to dismiss the Plaintiffs' appeal on the grounds that the Partial Summary Judgments and other Orders and other Judgments appealed from are not final judgments which conclusively determine all of the rights of the parties nor do they settle all the issues and claims in controversy in the action. Counsel for the Plaintiffs, Robert Planalp, has been contacted and we have been advised that Plaintiffs object to this Motion.

I. STATEMENT OF THE CASE

This case involves multiple parties and multiple counterclaims, crossclaims and defenses. A good summary of the procedural aspects of the case and the Decisions and Orders of the District Court appears in the attached DECISION AND ORDER RE: DEVELOPER DEFENDANTS' MOTION TO ENTER FINAL JUDGMENT AND MOTION FOR ATTORNEYS FEES AND COSTS.

In this decision, the District Court denies Developer Defendants' Motion to Enter Final Judgment in their favor and to award attorney's fees and costs to them. The District Court found that even though several issues between Developer Defendants and the Plaintiffs have been resolved by the District Court, there were two genuine issues of material fact between these parties that remain outstanding, that is: the issue of whether or not: (1) the appropriate authority has approved the

roads in Saddle Ridge Estates (hereinafter “SRE”); and (2) the roads in SRE have been transferred to the SRE Homeowners Association for maintenance purposes. The District Court also found that the Developer Defendants’ motion for attorneys fees and costs is premature and is stayed pending the decision on all the outstanding issues.

There are other issues outstanding between other parties that have not been resolved. For example the SRE Homeowners Association claims that the Northridge owners are liable for the past and future costs of maintenance of that portion of the SRE road system that they use.

II. STATEMENT OF THE APPLICABLE LAW

The Montana Rules of Appellate Procedure (M.R.App.P.) provide:

Rule 4. How and when to take an appeal or cross-appeal.

(1) Judgments defined:

(a) Final judgment. A final judgment conclusively determines the rights of the parties and settles all claims in controversy in an action or proceeding, including any necessary determination of the amount of costs and attorney fees awarded or sanction imposed.

(b) Interlocutory judgment. An interlocutory judgment is an order or decree that determines a preliminary or subordinate question or issue and which enables the court to render a final judgment but does not finally decide the cause.

...

Rule 4, M.R.App.P.

Rule 6. Application of these rules.

(1) What a court may review upon appeal from a judgment. *A party may appeal from a final judgment in an action or special proceeding and from those final orders specified in sections (2), (3), and (4) of this rule.* Upon appeal from a final judgment entered in an action or special proceeding in a district court, this court may review the judgment, as well as all previous orders and rulings excepted or objected to which led to and resulted in the judgment. (Emphasis ours)

Note that the Judgments and Orders appealed from by Plaintiffs do not fall under the appealable Order set forth in Rule 6(2), (3) or (4), M.R.App.P. Rule 6, M.R.App.P. further states:

(5) Orders and judgments that are not appealable. Although not exhaustive, the following judgments and orders are among those that are not appealable:

(a) In cases involving multiple parties or multiple claims for relief, an order or judgment which adjudicates fewer than all claims as to all parties, and which leaves matters in the litigation undetermined; subject, however, to the provisions of section (6) of this rule;
(emphasis added)

(b) Orders denying motions for summary judgment or motions to dismiss, or granting partial summary judgment;

(c) In proceedings regarding abused or neglected children, orders granting temporary investigative authority and/or protective services, and orders of temporary custody;

(d) Judgments or orders made in cases of civil or criminal contempt, except as provided in section (3)(j) of this rule and section 3-1-523;

(e) Orders granting or denying sanctions; and

(f) Interlocutory judgments, except as provided in sections (3)(j) and (6) of this rule.

(6) Certification of a judgment as final for purposes of appeal.

Notwithstanding the provisions of section (5)(a) of this rule, a district court may direct the entry of final judgment as to an otherwise interlocutory order or judgment, only upon an express determination that there is no just reason for delay, pursuant to M. R. Civ. P. 54(b). In so doing, the district court must balance the competing factors present in the case to determine if it is in the interest of sound judicial administration and public policy to certify the judgment as final, and the court shall, in accordance with existing case law, articulate in its certification order the factors upon which it relied in granting certification, to facilitate prompt and effective review. A certification order failing to meet these requirements shall be subject to summary dismissal pursuant to rule 4(4)(b).

Enacted by Sup. Ct. Ord. No. AF 07-0016, July 3, 2007, eff. Oct. 1, 2007.

Rule 6, M.R.App.P.

III. CASE LAW

Summary judgment orders are interlocutory, and therefore not appealable until the final judgment is rendered. Rule 2(a), M.R.App.P. *Glacier Tennis Club at Summit, LLC v. Treweek Const. Co., Inc.* (2004), 87 P.3d 431, 320 Mont. 351, rehearing denied. Appeal And Error.

The Supreme Court's policy is to encourage only one appeal from any case and to discourage piecemeal interlocutory appeals. *In re Marriage of Killpack* (2004), 87 P.3d 393, 320 Mont. 186, rehearing denied.

Judgment for two of multiple defendants was not final and appealable judgment, and, thus, notice of appeal from that judgment was premature and without legal effect, where trial court had not made express determination that there was no just reason for delay and had not made express direction for entry of judgment, and judgment was not appealable under any of the circumstances provided by rule for appeals from interlocutory orders or judgments. Rule 54(b), M.R.App.P.; Rule 1(b)(2, 3), M.R.App.P. *Shull v. First Interstate Bank of Great Falls* (1993), 262 Mont. 355, 864 P.2d 1268.

IV. ARGUMENT

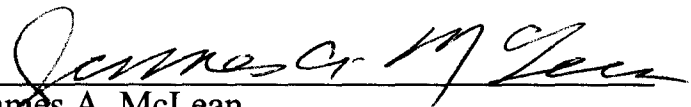
The Orders and Partial Summary Judgments appealed from by the Plaintiffs are clearly interlocutory and did not resolve all the issues between the multiple parties' issues and claims. There has been no certification by the District Court of any order or judgement as final for purposes of appeal. The orders and judgments do not come under any of the exceptions of appealable orders or judgments set forth in Rule 6(2), (3) or (4), M.R.App.P. The Plaintiffs' appeal clearly falls under

the Orders and Judgments that are not appealable under Rule 6(5), M.R.App.P.

Therefore the Court should dismiss the Plaintiffs' appeal and remand the case back to District Court for resolution of all the issues and claims among and between all the parties.

RESPECTFULLY SUBMITTED this 11th day of August, 2010.

Drysdale, McLean & Willett, PLLP

BY: 
James A. McLean
Attorneys for Defendants Grandview
Estates, Inc., a/k/a Grandview Heights,
Inc., George E. Cook, Alice M.
Cook, and Saddle Ridge Estates

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of August, 2010, a true and correct copy of the foregoing was duly served upon the following named person /_/_/ by personal service; /X/ by depositing a copy of same in the United States Mail, postage prepaid, and addressed as follows:

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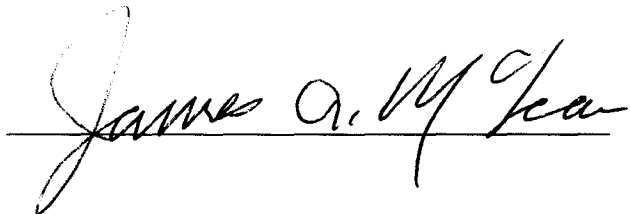
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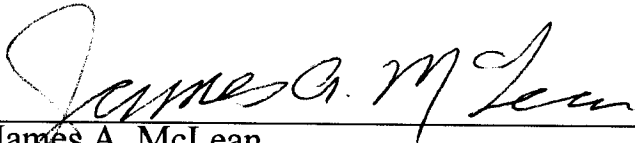
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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 16(3) of the Montana Rules of Appellate Procedure, I certify that this Motion is printed with a proportionately spaced Times new Roman text typeface of 14 points; is double spaced; and the word count calculated by WordPerfect X3 is not more than 1,2 50 words, excluding certificate of service and certificate of compliance.

DATED this 11th day of August, 2010.



James A. McLean
Attorney for Developer Defendants/Appellees